

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07

EA-07 FRB-03 INR-07 IO-10 NEA-10 NSAE-00 OPIC-03

SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 L-03 STR-04

SS-15 NSC-05 /102 W

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R 241832Z NOV 75

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PASS EB FOR BOEKER, L FOR FELDMAN, TREASURY FOR LANGE,
CIEP FOR GRANFIELD, COMMERCE FOR ARRILL

E. O. 11652: N/A

TAGS: EINV, EFIN, OECD

SUBJECT: INVESTMENT COMMITTEE (CIME) DRAFTING GROUP
NOVEMBER 21, 1975

REF: (A) IME(75)20

1. SUMMARY: AFTER NOVEMBER 19-20 MEETING OF FULL
INVESTMENT COMMITTEE (SEPTTEL), ITS DRAFTING GROUP
SPENT ENTIRE DAY, NOVEMBER 21, WORKING ON NATIONAL
TREATMENT GUIDELINES (REFDOC A) WITHOUT MAKING MUCH
FORWARD PROGRESS. SECRETARIAT HAS SCHEDULED FURTHER
SESSIONS OF THE DRAFTING GROUP ON DECEMBER 1 AND 2 AND
ON DECEMBER 17 PRIOR TO CIME MEETING DECEMBER 18-19.
END SUMMARY.

2. DRAFTING GROUP REVIEWED FIRST TEN PARAGRAPHS OF
NATIONAL TREATMENT GUIDELINES PROCEEDING ON ASSUMPTION,
FOR DRAFTING PURPOSES, THAT RESULT WOULD NOT BE LEGALLY
BINDING (I.E., UTILIZING "RECOMMENDS" LANGUAGE) AND
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WOULD BE ACCEPTED BY ALL MEMBER STATES. IN THIS REGARD

US DEL EMPHASIZED THE IMPORTANCE OF AT LEAST BALANCED POLITICAL COMMITMENT BY ALL PARTICIPATING MEMBER STATES TO ALL THREE ELEMENTS OF THE PACKAGE, AND SUGGESTED THAT SERIOUS CONSIDERATION BE GIVEN TO HAVING THE OECD COUNCIL APPROVE ENTIRE PACKAGE IN THE FORM OF A "DECLARATION" AS MEANS OF ACHIEVING THAT BALANCE.

3. US DEL TABLED A REDRAFT OF PARAGRAPH 1 OF NATIONAL TREATMENT GUIDELINE BASED ON FORMULAS FOUND IN US FCN TREATIES. IN THE COURSE OF DISCUSSION IT BECAME CLEAR THAT DELEGATIONS WISHED TO NARROW THE GUIDELINES TO EXCLUDE NATURAL PERSONS WHILE, IN SPITE OF LANGUAGE OF SECRETARIAT DRAFT REFDOK (A), WISHING TO BROADEN THE GUIDELINES TO INCLUDE COMPANIES ORGANIZED UNDER LAWS OF MEMBER COUNTRIES REGARDLESS OF STOCK OWNERSHIP. COMPLEXITIES OF ACHIEVING THESE RESULTS AND OF COVERING FOREIGN SUBSIDIARIES RESULTED IN PROTRACTED DISCUSSION WITH NO SPECIFIC RESULT. HOWEVER, DRAFTING GROUP AGREED ON BASIC US FORMULA FOR NATIONAL TREATMENT--NAMELY THAT "MEMBER COUNTRIES SHALL ACCORD TO ENTERPRISES OPERATING IN THEIR TERRITORIES... TREATMENT UNDER THEIR LAWS, REGULATIONS AND PRACTICES NO LESS FAVORABLE THAN THE TREATMENT ACCORDED, IN LIKE SITUATIONS, TO DOMESTIC ENTERPRISES."

4. PARAGRAPH 4 WAS REVISED TO READ: "THE GUIDELINE SHALL NOT AFFECT THE RIGHT OF MEMBER COUNTRIES TO REGULATE THE ENTRY OF FOREIGN INVESTMENT OR THE CONDITIONS OF ESTABLISHMENT OF ENTERPRISES PROVIDED THAT SUCH REGULATIONS DO NOT SUBJECT ENTERPRISES WHICH ARE ALREADY LEGALLY OPERATING ON THEIR TERRITORY TO LESS THAN NATIONAL TREATMENT."

5. FOLLOWING A LONG DISCUSSION OF PARAGRAPH 6, US DEL, SUPPORTED BY SWEDES AND CHAIRMAN (VOGELAAR), EXPRESSED STRONG RESERVATIONS TO JUSTIFYING PROVISION AUTHORIZING EC NINE TO DIFFERENTIATE BETWEEN COMMUNITY MEMBERS AND OTHER OECD STATES IN RESPECT OF NATIONAL TREATMENT. EC REP HAD PROPOSED DELETION OF WORD "JOINTLY" IN PARAGRAPH 6 TO FACILITATE ACTIONS BY LIMITED OFFICIAL USE

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INDIVIDUAL EC MEMBERS. HE ARGUED THAT AS EC STATES HAD UNDERTAKEN TREATY COMMITMENTS TO PROVIDE EACH OTHER'S ENTERPRISES NATIONAL TREATMENT, THEY WOULD BE DISADVANTAGED COMPARED TO OTHER OECD MEMBER STATES IN MAKING EXCEPTIONS TO NATIONAL TREATMENT IF THEY COULD NOT TREAT THE EC NINE DIFFERENTLY. US DEL POINTED OUT THAT US HAS TREATY OBLIGATIONS RELATING TO NATIONAL TREATMENT WITH A NUMBER OF OECD STATES, AND THAT EC MEMBERS ARE

NOT IN SPECIAL POSITION IN THIS REGARD. FRG AND EC
UNDERTOOK TO PROVIDE FURTHER EXPLANATIONS AND EXAMPLES
JUSTIFYING THIS POSITION. US DEL AGREED TO KEEP AN
OPEN MIND.

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6. IN PARAGRAPH 8, THE WORDS "ENDEAVOR TO" WERE ADDED
BEFORE "GIVE NOTIFICATION..." IN PARAGRAPH 9, THE LAST
PART OF THE FIRST SENTENCE BEGINNING "IN RESPECT OF
CERTAIN CATEGORIES" WAS DELETED.

7. US DEL TABLED REVISED LANGUAGE OF PARAGRAPH 10 AS
SET OUT IN POSITION PAPER. SWEDISH REACTION WAS QUITE
NEGATIVE. JAPANESE ALSO UNENTHUSIASTIC, EXPRESSING
CLEAR PREFERENCE FOR "OVERRIDING NATIONAL INTEREST
TEST. CHAIRMAN TOOK THE VIEW THAT US TEXT WOULD OPEN
ADDITIONAL LOOPHOLES AND PROPOSED FORMULA BASED ON A
DECLARATION SUBSCRIBING TO NATIONAL TREATMENT BALANCED
BY A PROVISION FOR NOTIFICATION OF EXCEPTIONS WITHOUT
ANY STANDARD. US DEL REJECTED THIS APPROACH AS

ESSENTIALLY ALTERNATIVE (A) OF PARAGRAPH 10, REFDOK (A).
FRG AND UK ARE WILLING TO DRAFT ON THE BASIS OF US TEXT,
BUT BOTH EXPRESSED CONCERN AND CONFUSION
OVER US FORMULA RELATING TO "ACTIVITIES DIRECTLY
RELATED TO THE ELEMENT OF FOREIGN CONTROL." UK
SUGGESTED COUNTER-DRAFT AS FOLLOWS: "EXCEPTIONS MAY BE
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INTRODUCED AFTER ENTRY INTO FORCE OF THE PRESENT
GUIDELINES WHERE ASSOCIATED WITH THE EXISTENCE OF
SERIOUS INJURY TO MAJOR SOCIAL AND ECONOMIC INTERESTS
THROUGH ENTERPRISES UNDER FOREIGN CONTROL ENGAGING IN
THEIR LEGITIMATE ACTIVITIES. EXCEPTIONS INTRODUCED
HEREUNDER SHOULD TERMINATE ONCE THERE IS NO LONGER A
THREAT OF SERIOUS INJURY. REASONS MUST BE PROVIDED AT
THE SAME TIME AS NOTIFICATION IS GIVEN OF ANY NEW
EXCEPTIONS." IN RESPONSE TO QUESTION, UK DEL INDICATED
HE COULD PROBABLY LIVE WITH STATEMENT OF CAUSAL RELATION-
SHIP AS INCLUDED IN ALTERNATIVE (C) IF 'MAJOR SOCIAL
AND ECONOMIC INTERESTS' COULD BE SUBSTITUTED FOR THE
NATIONAL ECONOMY."

8. AGENDA OF NEXT DRAFTING GROUP ON DECEMBER 1 AND 2
WILL INCLUDE COMPLETION OF NATIONAL TREATMENT GUIDELINE,
INCENTIVES/DISINCENTIVES, AND FURTHER WORK ON GUIDELINES
FOR MNE'S (POLITICAL INVOLVEMENT, LABOR) AS WELL AS A
COMPLETE REVIEW OF SUGGESTIONS MADE BY BIAC AND TUAC ON
THE MNEGUIDELINES.
TURNER

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